

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22538-ALTMAN/REID

DOMINIK KARNAS, *et al.*,

Plaintiffs,

v.

MARK CUBAN, *et al.*,

Defendants.

/

**DEFENDANTS MARK CUBAN'S AND DALLAS BASKETBALL LIMITED d/b/a
DALLAS MAVERICKS' RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL
AUTHORITY [ECF NO. 305] REGARDING DEFENDANTS' OMNIBUS MOTION TO
DISMISS THE SECOND AMENDED COMPLAINT [ECF NO. 189]**

Plaintiffs have filed another off-base supplemental authority. ECF No. 305. *Harper v. O'Neal*, 2024 WL 3845444 (S.D. Fla. Aug. 16, 2024), involves different facts and law. The *Harper* plaintiffs alleged Shaquille O'Neal violated the federal Securities Act by directly promoting a specific unregistered NFT and allegedly financially benefited from plaintiffs' purchases by having a direct financial stake in the company selling it. *Id.* at *4. By contrast, Plaintiffs bring only state-law claims with distinct elements. ECF No. 155 ¶¶ 343-526. Plaintiffs allege merely that Defendants promoted Voyager's trading platform. They do not (and cannot) allege Defendants ever urged the purchase of any alleged security, let alone received any financial benefit from Plaintiffs' (or anyone's) purchases. ECF No. 189 at 13-15. That is a distinction with an enormous difference. Finally, the alleged securities in *Harper*—NFT avatars for virtual worlds—differ significantly from those here: Earn Program Accounts, through which Voyager paid rewards for holding crypto. Judge Moreno only found that plaintiffs in *Harper* sufficiently alleged that NFTs might be investment contracts, not that all NFTs or other crypto products inherently are. 2024 WL 3845444, at *8.

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In short, *Harper* is factually and legally distinguishable from the instant case.

Date: August 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via the Court's CM/ECF which will send notification of such filing to all attorneys of record.

/s/ Christopher E. Knight

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